IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14646 2007
Date of decision: 17.12.2007

Sahil Mittal

-----Petitioner

Vs.

State of Punjab and others

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. Binderjit Singh, Advocate for the petitioner.

Mr. HS Mattewal, A.G.Punjab with Mr. Salil Sagar and Mr. Suvir Sehgal, Additional Advocate Generals for respondent No.1.

Mr. Ashish Rawal, Advocate for Mr. Anupam Gupta, Advocate for respondent No.2.

Mr. Raju Ram Chandran, Sr. Advocate with Ms. Jayshree Anand, Mr. Harinder Singh Sidhu and Mr.Saurabh Suman Sinha, for respondent No.3. (SGPC)

JUDGEMENT

1. This petition seeks quashing of notification dated 13.4.2001, Annexure P.7 declaring Sikh Educational institutions in the State of Punjab to be 'minority' and permitting them to reserve 50% seats for the members of Sikh Community. Further, direction has been sought for quashing notification dated 26.4.2006

(Annexure P11) and notification dated 18.6.2007 (Annexure P.10). Vide notification dated 18.6.2007, certain institutions have been allowed to divide NRI seats equally between the Government quota and the management quota. A direction has also been sought for quashing notification dated 1.8.2007 (Annexure P8) fixing the separate fee structures for Government quota and management.

2. Case set out in the petition is that the petitioner passed his +2 examination in the year 2007. He appeared for counselling but was not selected. His chance of selection was affected on account of 50% seats having been exclusively reserved for the members of the Sikh community in violation of Article 14 of the Constitution, vide notification dated 3.4.2001, Annexure P.7. Further, notification dated 18.6.2007 was issued permitting minority quota and NRI seats to be divided between the government quota and minority quota, thereby affecting meritorious candidates. Notification dated 26.4.2006 has also been issued under section 2(f) of the Punjab Private Health Sciences Educational Institutions (Regulation of Admission, Fixation of Fee and Making of Reservation) Act, 2006 declaring that Christians and Sikh Institutions run by the Shiromani Gurdwara Parbandhak Committee (SGPC) to be minority institutions for the purpose of the Act (Annexure P.11). The said notification was also contrary to

law laid down by the Hon'ble Supreme Court. Prayer made is that if declaration of Sikhs as minority is declared void, the petitioner has every chance of getting admission on his own merit. It has also been stated that Sikhs are in majority in the State of Punjab but the basis of the impugned notification Annexure P.7 is that number of Sikhs was minority in the country which was not legally permissible basis.

3. In the reply filed on behalf of the State, stand taken is that under section 8 of the Act, complaints could be filed for violation of the Act or directions or notification and, therefore, the writ was not maintainable. Affected students and affected institutions have not been impleaded as parties and on that ground also, the writ petition was not maintainable. On merits, it has been stated that declaration of institutions run by the SGPC as minority institutions vide notifications dated 3.4.2001 and 25.4.2006 was valid. Question of minority should be interpreted liberally as held in re:**The Kerala Education Bill, 1957 (Special Reference No.1 of 1958)**, AIR 1958 SC 956 (at Page 986).

The SGPC has been constituted under the Sikh Gurdwara Act, 1925 (in short, 'the 1925 Act') for better administration of Sikh Gurdwaras. The SGPC is an inter-State body as per Section 72 of the Punjab Reorganisation Act, 1966 and

has electoral jurisdiction outside the State of Punjab also. The SGPC also looks after the Sikh minority community in all the States and is, thus, a minority organisation. Under Section 2(9) of the 1925 Act, the word 'Sikh' is defined as under:-

> "Sikh means a person who professes the Sikh religion or, in the case of deceased person, who professed the Sikh religion or was known to be a Sikh during his life time.
>
> If any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh accordingly as he makes or refuses to make in such manner as the State Government may prescribe the following declaration:-
>
> I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib that I believe in the Ten Gurus, and that I have no other religion."

Section 49 of the 1925 Act lays down the qualifications for the electors. Number of Sikh voters in the year 2004 was 53,57,988 and as against total voters (1,65,71585) in the State of Punjab, the said figure was minority. Seats in the minority quota are filled up by entrance examination conducted by Association of Unaided Sikh Minority Medical and Dental Institutions (Punjab State) on all India basis for Sikh Minority Community candidates only. As per the prospectus for the eligibility and qualification to

appear in the entrance test, it is essential for the candidate to be resident of India and belongs to Sikh Community. In addition to this, a candidate is to be considered Sikh/belonging to Sikh Community if he practices the Sikh faith and maintains Sikh appearance i.e. he/she does not cut or trim hair and wears turban (in case of male candidates) and has the word "Singh/Kaur" with his/her name, has faith in the Ten Sikh Gurus and Sri Guru Granth Sahib only, and does not owe allegiance to any other sect or religion. It has been further stated that questions relating to minorities were left open in **TMA Pai Foundation v. State of Karnataka,** 2002(8) SCC 481. As per judgment of the Hon'ble Supreme Court in **Manager St.Thomas UP School Kerala and another v. Commissioner and Secretary to General Education Department and others**, (2002) 9 SCC 497, question of grant of minority status should be left to fact finding authorities.

4. In the reply filed by the SGPC, it has been stated that the 1925 Act was enacted on account of agitations in which over 65000 persons were arrested and about 400 persons lost their lives. The area of operation of SGPC comprises Punjab, Haryana, Chandigarh and parts of Himachal Pradesh. 15 persons, of whom not more than 5% are from Punjab, are co-opted by the elected members and thus, SGPC is a representative body of Sikhs from all

over the country. Under Section 72(3) of the 1925 Act, SGPC is an inter-State body. The plea regarding leaving of questions relating to minority open in **TMA Pai Foundation** (supra) and definition of 'Sikh" under section 2(9) of the 1925 Act, has also been repeated. It has been further mentioned that followers of sects known as Nirmalas, Ramraiyas, Dhirmalias, Udasis, Namdhari Kukas, Nirankaris, Radhasoamis, followers of Divya Jyoti Jagran Samiti, followers of Dera Sacha Sauda of Sirsa, followers of Baba Bhaniarewala cannot be considered to be Sikhs. Some of them believe in a living Guru, which is contrary to the basic tenets of Sikh faith. Hukamnamas have been issued by the Akal Takht Sahib against Nirankaris, followers of Divya Jyoti Jagran Samiti, followers of Dera Sacha Sauda of Sirsa etc., declaring that they are not Sikhs and calling upon the Sikh community to severe all social and cultural relations with them. On account of influx of persons of different religions from other States in Punjab, Sikhs are in minority. No census have been conducted as per definition of "Sikh" under the 1925 Act. In the elections of the SGPC held in 2004, number of eligible Sikh electors in Punjab were 53,97,988 as against total voters being 1,65,71,585. As per prospectus of Guru Ram Das Institute of Medical Sciences and Research, a "Sikh" has been separately defined and following provision has

been made:-

> "1) A candidate will be considered Sikh/belonging to the Sikh community if he practices the Sikh faith, and maintains Sikh appearance i.e., he/she does not cut or trim hair and wears turban (in case of male candidates) and has the word "Singh/Kaur" with his/her name, has faith in the Ten Sikh Gurus and Sri Guru Granth Sahib only, and does not owe allegiance to any other sect or religion.
>
> 2) A male Sikh candidate who does not presently bear the suffix "Singh" and a female Sikh candidate the word "Kaur" with his/her name, may get it added legally (that is through an affidavit plus notice in a newspaper regarding the change of name) before submission of his/her application by the last date."
>
> Affidavit D1, D2 and E affirming the above conditions is required to be filed by the candidates as mentioned in the prospectus of these institutions."

Section 2(c) of the National Commission for Minorities Act, 1992, defines "minority" as under:-

> "(c) "minority", for the purposes of this Act, means a community notified as such by the central Government;

In exercise of powers conferred by clause (c) of Section 2 of the National Commission for Minorities Act, 1992 the Central Government by notification dated 23rd October, 1993 notified the following communities as 'the minority communities'

for the purposes of the said Act. Namely:

1. Muslims
2. Christians
3. Sikhs
4. Buddhists
5. Zoroastrians (Parsis)"

Reference has also been made to National Commission for Minority Educational Institutions Act, 2004.

5. On 20.11.2007, learned counsel for the parties sought time to produce more documents. Annexures P.12 to P.19 have been filed by the petitioner. Annexure P.12 is a compilation of Census of India, Office of the Registrar General and Census Commissioner, India showing the compilation of declaration about religion. The relevant extract is as under:-

> "Punjab is the stronghold of Sikhism. The Sikh population of Punjab accounts for more than 75% of the total Sikh population in the country, Chandigarh (16.1%), Haryana (5.5%), Delhi (4.0%), Uttaranchal (2.5%) and Jammu and Kashmir (2.0%) are other important States/UTs having Sikh population. These six states/UTs together account for nearly 90 percent Sikh population in the country."

Annexure P.14 is a document from the Global Security Organisation stating that 80% of Sikhs live in Punjab. Annexure P.15 is a document from the Website: Sikhspectrum.com,

mentioning that Sikhs form 65% population of the newly created State of Punjab. Annexure P.19 is a judgment by Committee for Overseeing the Entrance Test conducted by Association of Private Professional College at Chandigarh. The Chairman, a retired Judge, considered the representation dated June 10, 2004, filed by Unaided Sikh Minority Medical and Dental institutions (Punjab). The Chairman after considering the arguments addressed by Bibi Jagir Kaur, Mr. MS Grewal, former Minister and the Director/Principal of the Medical Colleges, held that Sikhs form the predominant religious community as per 1991 census being 62.95 percent of the State's total population. It was observed that in the judgment of the Hon'ble Supreme Court in **D. A. V. College, Bhatinda v. State of Punjab**, AIR 1971 SC 1731, Hindus were held to be religious minority in the State of Punjab. Reference was also made to judgment of the Hon'ble Supreme Court in S**P Mittal v. Union of India and others,** AIR 1983 SC 1, to the effect that benefit of Article 30(1) could be claimed only by proving that the community was religious or linguistic minority. The Unit to determine the religious or linguistic minority was the State. Notification dated 3.4.2001 was held to be contrary to law laid down in **TMA Pai Foundation** (supra) and notification dated 17.6.2004 permitting separate entrance test to be held, was also

held to be bad. There was a dissenting note by other members to the effect that the issue was beyond the scope of the Committee.

6. On behalf of the SGPC, following documents have been filed:-

"1. **Religious books of Sant Nirankari Mandal**

1. Avtar Bani (English Translated);
2. The Great Man;
2. Religious literature of Dera Sacha Sauda Sirsa
   1. Prem Lila
   2. Sachi Shiksha
   3. Sachkhund da Sandesh
   4. Hukamnamas and reports concerning the Dera.

3. Religious Books of Radha Soami Satsang Beas

1. Atam Gyan;
2. Atma Da Safar;
3. Sant Mat Parkash part I;
4. Sant Marg;
5. Paras Taon paras;
6. Benti Te Prathna de Shabad;
7. Marg De Khoj Veech;

4. Religious books of Namdhari Samparda, Bhaini Sahib, Ludhiana.

1. Sikh Ithas Te Kuke;
2. Sri Nanak Raj;
3. Sara Kaliyug Bhogsi;
4. Krantikari Satguru Ram singh ji;
5. Bharti Sutanterta Itihas Da Sunehari Panna;
6. Jag Paltau Satguru;

7.Namdhari Itihas Sankhep;

8.Namdhari Sindhant Darshan

9.Mahima Bhaini Sahib De;

10.Gurupad Parkash;

5. **Religious literature of Divya Jyoti Jagrati Sansthan, Nurmahal**

1. Such De Khoj;

2.Gyan Jyoti;

3.Divya Gyan Parkash (Hindi);

4.An insight into Spirituality (English);

6. **Baba Piara Singh Bhaniare Wala**

1. Reports in English Justice Retd. Ujjagar Singh, Kulwant Singh Dr. Kharak Singh, Enquiry Commission in English.

7. **Views of Religious Scholars etc**."

No reference was, however, made to above documents at the time of hearing.

7. We have heard learned counsel for the parties and perused the record.

8. Contention raised on behalf of the petitioner is that as per Census figures, the Sikhs were in majority in the State of Punjab and the State was to be taken as a Unit. In the impugned notification, country was taken as a unit, which was not permissible. There was no basis for holding the "Sikhs"to be minority in the State of Punjab.

9. Learned counsel for the State and the SGPC submitted

that the population of Sikhs should be taken to be equal to the members of electoral college for voting in the SGPC elections, as mere declaration by any citizen that he was a Sikh, was not enough to treat him as a Sikh. The expression "Sikh" as commonly understood may also include several other sects such as Udasis, Nirmalas etc, which were not covered by the definition of "Sikh" under section 2(9) of the 1925 Act and the impugned notification was justified on that basis and the question whether Sikhs were not minority in the State of Punjab involved a question of fact, which could not be gone into by this Court. Reliance has been placed on a judgment of the Privy Council in **Hem Singh and others v. Basant Das and another**, AIR 1936 Privy Council 93, judgment of Lahore High Court in **Ram Parshad and others v. Shiromani Gurdwara Parbandhak Committee, Amritsar and others,** AIR 1931 Lahore 161, holding that "Udasis" were not Sikhs for the purposes of 1925 Act and judgment of the Hon'ble Supreme Court in **Mahant harnam Singh v. Gurdial Singh and another,** AIR 1967 SC 805, holding that Nirmala Sadhus were not Sikhs. Reliance has also been placed on judgments of the Hon'ble Supreme Court in **Shiromani Gurdwara Parbandhak Committee v. Mahant Harnam Singh and others** , (2003) 11 SCC 377 and **Pritam Dass Mahant v. Shiromani Gurdwara**

Prabandhak Committee, (1984) 2 SCC 600, in support of the submission that the term "Sikh" had a restricted meaning in the context of Section 2(9) of the 1925 Act.

10. The question for consideration is whether declaration of "Sikhs" as minority in the State of Punjab was valid?

11. It will be appropriate to reproduce the impugned notifications dated 13.4.2000, Annexure P.7 and 26.4.2006, Annexure P.11, which are as under:-

> "**Notification dated 13.4.2001**
>
> No.18/33/2001-GC(6) 4513 – Whereas in terms of the provisions of the Constitution of India, the Sikhs are a minority community in the Country.
>
> AND whereas the Governor of Punjab is of the opinion that the Sikh Educational Institutions ought to be treated as Minority Educational Institutions:
>
> Now, therefore, the Governor of Punjab is pleased to declare that the Sikh Educational Institutions, run by the Sikh Gurdwara Parbandhak Committee, Amritsar, can reserve upto fifty percent seats exclusively for the members of the Sikh Community; and for furtherance of the interest of the Sikh Community, the aforesaid Committee may, make reservation within the seats, so reserved."
>
> **Notification dated 26.4.2006**
>
> Under the powers conferred by Clause 2, Sub clause (f) of the Punjab Private Health Sciences

> Educational institutions (Regulation of Admission, Fixation of Fee and making of Reservation) Act, 2006 and all other powers given therein, the Governor of Punjab is pleased to notify that Minority for the purpose of this Act in the State of Punjab includes Christians and the Sikh Educational Institutions, run by the Shiromani Gurdwara Parbandhak Committee and as such all the Institutions established by the Christians and those by the Shiromani Gurdwara Parbandhak Committee falling under the purview of this Act, shall be deemed to be Minority Institutions for the purpose of this Act."

Notifications Annexures P.8 and P.10 are mere consequential.

12. We are of the view that concept of Sikhs as a minority for purposes of Articles 29 and 30 of the Constitution is not controlled by the definition of "Sikh" under section 2(9) of the 1925 Act. The 1925 Act has been enacted to provide for better administration of Sikh Gurdwaras. The Act provides for constitution of a Board, Committees and Commission by way of election and confers powers of control and management of Gurdwaras on the said authorities. Electoral roll is to be prepared for which qualifications have been laid down.

13. The judgments relied upon by the respondents deal with

the issue in the context of Section 2(9) of the 1925 Act. The authorities under the 1925 Act are not entitled to deal with the religious places or persons not covered under the definition of "Sikh" under section 2(9) of the 1925 Act. The said judgments, cannot, thus, be held to be relevant for purposes of the question arising in the context of Articles 29 and 30 of the Constitution.

14. The concept of minority for purposes of Articles 29 and 30 of the Constitution has been discussed in several decisions of the Hon'ble Supreme Court.

In **Bal Patil and another v. Union of India and others,** (2005) 6 SCC 690 : AIR 2005 SC 3172, in para 11, it was observed:-

> "The expression 'minority' has been used in Articles 29 and 30 of the Constitution but it has nowhere been defined. The Preamble of the Constitution proclaims to guarantee every citizen 'liberty of thought, expression, belief, faith and worship'. Group of Articles 25 to 30 guarantee protection of religious, cultural and educational rights to both majority and minority communities. It appears that keeping in view the constitutional guarantees for protection of cultural, educational and religious rights of all citizens, it was not felt necessary to define 'minority. Minority as understood from constitutional scheme signifies an identifiable

> group of people or community who were seen as deserving protection from likely deprivation of their religious, cultural and educational rights by other communities who happen to be in majority and likely to gain political power in a democratic form of Government based on election."

The Hon'ble Supreme Court also referred to historical background in which concept of minority was incorporated in the Constitution of India. Reference was also made to Eleven Judge Bench judgment in **TMA Pai Foundation v. State of Karnataka,** (2002) 8 SCC 481, laying down that State was to be regarded as a unit for determining minority. It was further observed that social, cultural and religious conditions of the community had to be taken into account and the test for declaring any group of people as minority was need for protection from majority who may gain political power and who may deprive such minority group of their religious, cultural and educational rights.

15. Thus, the question is whether there is any iota of material justifying that in the State of Punjab, the Sikhs in general or even Sikhs as defined under section 2(9) of the 1925 Act were such a group who deserved protection from deprivation of their rights by other communities, who may be in majority and who may gain political power. The answer clearly is in the negative. There is nothing to show from the written statement filed by the State of

Punjab that it had any material or even a grievance that as a group, the Sikhs apprehended deprivation of their religious, cultural or educational rights in the State of Punjab from any other community, who may be in majority and who may gain political power in election. On this short ground, the impugned notifications cannot be sustained in law.

16. We may also refer to observations of the Hon'ble Supreme Court that encouraging concept of minorities on the basis of religion, for getting special protection, privileges and treatment would be serious jolt to the secular structure of the democracy. All religions and religious groups have to be treated equally and with equal respect without interfering with their individual rights of faith and worship. Integrity and unity of India by gradually eliminating the minority and majority classes is the constitutional goal. Atmosphere of mutual fear and distrust can create threat to the integrity of the country and sow seeds of multinationalism. The Constitution has accepted one common citizenship for every Indian. (as per observations in Paras 33,35 and 37 in **Bal Patil** (supra).

17. We may also make a reference to other Hon'ble Supreme Court judgements, expressing identical view.

In **TMA Pai foundation** (supra), even though, the

question about meaning of religion and right of a sect to claim minority status and certain other questions were left open, it was observed by the majority of the judges that basic principle of equality and secularism had to be maintained and the goal is to unite people to form one strong nation. (Para 161 Kirpal,CJI for himself and on behalf of Pattanaik, Babu, Balakrishnan, Reddi and Pasayat,JJ, Paras 401, 402, 405 and 408 Variava,J. for himself and Ashok Bhan,J). Quadri,J. in Para 246 observed that the word minority meant a non-dominant group and was a relative term representing smaller of the two numbers. Khare,J. (as he then was) observed in para 226, after referring to earlier judgment of the Hon'ble Supreme Court in **The Ahmedabad St.Xavier's College Society and another Ex. v. State of Gujarat and another**, AIR 1974 SC 1389 that protection of minorities was the protection of non-dominant groups. In **St.Xavier's College Society** (supra) (Paras 77), Khanna,J. referred to historical aspect of the matter and observed that the idea of giving some special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence. The said rights were designed not to create inequality. Methew,J. in para 130 of the said judgment observed that protection of minorities was protection of non-

dominant groups.

In **S.R.Bommai and others etc. v. Union of India and others etc.,** AIR 1994 SC 1918, B.P.Jeevan Reddy,J observed in para 238 that the essential basis of the Constitution was that all citizens were equal. Referring to Article 51A(3) (in para 237), it was observed that every citizen has to promote spirit of harmony and brotherhood. Similar observations were made in the said judgment by P.B.Sawant,J. in para 88 and K.Ramaswamy,J. in para 114. In para 116, it was observed that matters which were purely religious were left personal to the individuals and the secular part was taken charge by the State on the ground of public interest and general welfare. In paras 119, 122, 124 and 125, universality of the religion was referred to as a part of secularism.

In **Islamic Academy of Education and another v. State of Karnataka and others,** AIR 2003 SC 3724, S.B.Sinha,J. in the context of rights of minorities in professional educational institutions, observed that additional protection to minorities was to bring minorities on the same platform as that of non-minorities and the goal of equality could not be ignored (paras 102, 115). It was further observed that at Post Graduate level, services of doctors, Engineers and other professionals require excellence (Para 197). Rights of minorities, right of persons to have higher

education and right of development should be balanced (para 199). Excellence in professional education must be viewed from economic interest of country to compete with other developed countries and when there were two competing human rights - human rights for religious minorities and human rights for development, having regard to economic and national interest of the country, the latter should be allowed to prevail subject to protection of basic minority rights.

In **PA Inamdar and others v. State of Maharashtra and others,** AIR 2005 SC 3226, a Bench of Seven Hon'ble Judges of the Hon'ble Supreme Court observed in para 93 that education was national wealth essential for nation's progress and prosperity. It was further observed that right under Article 30, though styled as a right, was more in the nature of protection for minorities (Para 94). It was also observed that the view taken by Six Judge Bench in **Sidhrajbhai Sabbai v. State of Gujarat,** AIR 1963 SC 540 and Nine Judge Bench in **St.Xavier's College Society** (supra) to the effect that no regulation can be cast in “the interest of nation”, if it does not serve the interest of minority, was overruled by majority in **TMA Pai Foundation (**Para 97). Thus, the right under Article 30 could not over-ride national interest. In Para 107, it was observed that professional educational institutions constituted a

class by themselves and merit and excellence assume special significance in the context of such studies.

18. The above discussion leads us to hold that secularism and equality are the basic features, particularly in professional education and additional protection for minorities, which may allow admissions to professional colleges only to students belonging to minority by ignoring the entire merit available, cannot be conferred unless there is sufficient material to substantiate claim of an identifiable group of people needing protection from likely deprivation of their religious, cultural or educational rights at the hands of other communities who may happen to be in majority and who may be likely to gain political power in a democratic form of government based on election. In the State of Punjab, it cannot be held that Sikhs were such a group of persons who apprehended deprivation of their religious, cultural and educational rights by other communities, who were in majority and who were likely to gain political power. No such exercise appears to have been even carried out by the State Government.

19. As regards the contention raised on behalf of the respondents that this Court could not go into the question of fact, we do not find any merit therein. The judgment in **Manager St.Thomas UP School Kerala** (supra) is distinguishable. Therein,

the High Court did the exercise of determining whether a particular school was minority by appreciating evidence on record. In the present case, we are considering the question whether relevant legal parameters have been applied by the State Government for determining "Sikh Educational Institutions" in the State of Punjab to be "minorities". Such a question is clearly within the purview of jurisdiction of this Court. If a public authority exercises its authority on irrelevant considerations or by ignoring relevant considerations, the order passed is ultra vires the power conferred on such an authority and decision taken will be vitiated.

In **The Comptroller and Auditor General of India, Gian Prakash, New Delhi and another v. KS Jagannathan and another,** AIR 1987 SC 537, it was observed:-

> "20.There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the

> object of conferring such discretion or the policy for implementing which such discretion ahs been conferred. In all such cases and in any other fit and proper case a High Court can in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion."

The same view has been taken in **Tata Cellular v. Union of India,** AIR 1996 SC 11, Paras 93, 98, 99 and 101 and ***Common Cause, A Registered Society v. Union of India,*** AIR 1999 SC 2979, Para 39.

In ***I.R. Coelho v. State of T.N.*** (2007) 2 SCC 1, it has been held that judicial review is integral and essential feature of the Constitution. We need not refer to plethora of precedents on the issue, the principle being well-settled.

20. In the present case, the State of Punjab while issuing the impugned notifications has not applied the relevant parameters

for declaring a group of individuals to be minority. The country could not be taken as a unit, as has been done. There is no material to substantiate that "Sikhs" are non-dominant group in the State of Punjab apprehending deprivation of their rights at the hands of "dominant" groups, who may come to power in the State in a democratic election. Thus, the impugned notifications are clearly ultra vires the jurisdiction of the State Government, violating right of equality and public interest. As a consequence of impugned notifications, additional protection has been conferred on a group of citizens unauthorisedly to the exclusion of other similarly placed citizens, which is clearly violative of Article 14 of the Constitution.

21. Accordingly, we allow this petition and declare notifications dated 13.4.2001, Annexure P.7 and 26.4.2001, Annexure P.11, declaring "Sikh Institutions" run by Sikh Gurdwara Parbandhak Committees to be "minority" Institutions for the purpose of Section 2(f) of the Punjab Private Health Sciences Educational Institutions (Regulation of admission, Fixation of Fee and Making of Reservation) Act 2006 or otherwise, to be void. All consequential actions taken will also stand declared void. However, this order will not affect the admissions already given prior to the date of this judgment,] except those which are subject matter of any pending proceedings.

22. We further direct that claim of the petitioner be now considered, in accordance with law, in the light of this judgment, within one month from the date of receipt of a copy of this order.

(Adarsh Kumar Goel)
Judge

December 17 , 2007 **(Ajai Lamba)**
'gs' **Judge**